AMENDED IN SENATE JUNE 25, 2003

AMENDED IN ASSEMBLY APRIL 28, 2003

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AMENDED IN ASSEMBLY APRIL 8, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL No. 1308

Introduced by Assembly Member Goldberg
(Coauthors: Assembly Members Bermudez, Leno, and Longville)

February 21, 2003

An act to amend Sections 11758.41*,* *11758.42,* and 11880 of, and to add Section 11880.5 to, the Health and Safety Code, and to add Section 4032 to the Penal Code, relating to drug treatment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1308, as amended, Goldberg. Drug treatment: local correctional facilities: indigent addicts.

(1) Existing law provides for programs for the treatment of the addiction of state prison inmates to alcohol or controlled substances, as specified.

This bill would generally authorize local correctional facilities to also provide programs for the treatment of the addiction of inmates at local correctional facilities to alcohol or controlled substances, as specified and to, no later than January 1, 2007, submit a plan for implementing those programs. *The bill would provide that programs based on available standards of care shall receive priority eligibility in the award of competitive state grants, as specified.*

(2) Existing law provides that it is the intent of the Legislature in licensing narcotic treatment programs to provide a means whereby the patient may be rehabilitated and will no longer need to support a dependency on heroin, and declares that the ultimate goal of all narcotic treatment programs shall be to aid the patient in altering his or her lifestyle and eventually to eliminate all dependency on drugs.

This bill would clarify these provisions by specifying that the narcotic treatment programs licensed by the state are those that use prescription medications to help rehabilitate patients and by declaring that the ultimate goal of all narcotic treatment programs is aiding the patient to eliminate dependence on all illicit drugs. The bill would also provide that a patient who is also a defendant because of the possession and use of heroin may be directed by a court to discontinue narcotic replacement therapy only when the defendant's treatment provider who is directly providing the narcotic replacement therapy recommends discontinuation and the court agrees that discontinuation is a necessary component of an effective treatment plan for the defendant.

(3) Existing law sets forth specified legislative intent language regarding Medi-Cal drug treatment programs.

This bill would delete that intent language and instead provide that it is the legislative intent to sustain and enhance the system of care for indigent opioid addicts who are not eligible for Medi-Cal benefits, and to reduce administrative overhead and department costs by codifying a clear, legal, and complete sliding scale system for determining indigent client status that is based on the proven format of the State Department of Mental Health's Uniform Method of Determining Ability to Pay.

(4) Existing law provides that reimbursement to narcotic treatment program providers for narcotic replacement therapy dosing and ancillary services provided under the provider's narcotic treatment program shall be limited to the lower of either the uniform statewide monthly reimbursement rate or the provider's usual and customary charge to the general public for the same or similar service.

This bill would provide that services to persons who are indigent but not eligible for Medi-Cal by specified public or private narcotic treatment program providers shall be reimbursed if service charges are imposed either in accordance with the above formula and applicable federal regulations or on a sliding scale based on the ability to pay of persons qualified as indigent, provided the provider satisfies specified requirements. The bill would provide that fees collected for services on

a sliding scale basis do not constitute a usual and customary charge to the general public.

(5) Under existing law the uniform statewide monthly reimbursement rate is required to be established after consultation with narcotic treatment program providers and county alcohol and drug administrators.

This bill would provide that whether a program provider provides indigency allowances, as specified, shall be a consideration in determining the reimbursement rate.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 11758.41 of the Health and Safety Code is amended to read:

11758.41. It is the intent of the Legislature to sustain and enhance the system of care for indigent opioid addicts who are not eligible for Medi-Cal benefits, and to reduce administrative overhead and department costs by codifying a clear, legal, and complete sliding scale system for determining indigent client status that is based on the proven format of the State Department of Mental Health's Uniform Method of Determining Ability to Pay (UMDAP).

SEC. 2. *Section 11758.42 of the Health and Safety Code is amended to read:*

11758.42. (a) For purposes of this chapter, ''LAAM'' means levoalphacetylmethadol.

(b) (1) The department shall establish a narcotic replacement therapy dosing fee for methadone and LAAM.

(2) In addition to the narcotic replacement therapy dosing fee provided for pursuant to paragraph (1), narcotic treatment programs shall be reimbursed for the ingredient costs of methadone or LAAM dispensed to Medi-Cal beneficiaries. These costs may be determined on an average daily dose of methadone or LAAM, as set forth by the department, in consultation with the State Department of Health Services.

(c) Reimbursement for narcotic replacement therapy dosing and ancillary services provided by narcotic treatment programs shall be based on a per capita uniform statewide monthly

reimbursement rate for each individual patient, as established by the department, in consultation with the State Department of Health Services. The uniform statewide monthly reimbursement rate for narcotic replacement therapy dosing and ancillary services shall be based upon, where available and appropriate, all of the following:

(1) The outpatient rates for the same or similar services under the fee-for-service Medi-Cal program.

(2) Cost report data.

(3) Other data deemed reliable and relevant by the department.

(4) The rate studies completed pursuant to Section 54 of Assembly Bill 3483 of the 1995–96 Regular Session of the Legislature.

(d) The uniform statewide monthly reimbursement rate for ancillary services shall not exceed, for individual services or in the aggregate, the outpatient rates for the same or similar services under the fee-for-service Medi-Cal program.

(e) The uniform statewide monthly reimbursement rate shall be established after consultation with narcotic treatment program providers and county alcohol and drug program administrators*; whether a program provider provides for indigents as specified in clause (v) of subparagraph (A) of paragraph (1) of either subdivision (i) or (j) shall be a consideration in determining the rate.*

(f) Reimbursement for narcotic treatment program services shall be limited to those services specified in state law and state and federal regulations governing the licensing and administration of narcotic treatment programs. These services shall include, but are not limited to, all of the following:

(1) Admission, physical evaluation, and diagnosis.

(2) Drug screening.

(3) Pregnancy tests.

(4) Narcotic replacement therapy dosing.

(5) Intake assessment, treatment planning, and counseling services. Frequency of counseling or medical psychotherapy, outcomes, and rates shall be addressed through regulations adopted by the department. For purposes of this paragraph, these services include, but are not limited to, substance abuse services to pregnant and postpartum Medi-Cal beneficiaries.

(g) Reimbursement under this section shall be limited to claims for narcotic treatment program services at the uniform statewide monthly reimbursement rate for these services. These rates shall be exempt from the requirements of Section 14021.6 of the Welfare and Institutions Code.

(h) (1) Reimbursement to narcotic treatment program providers shall be limited to the lower of either the uniform statewide monthly reimbursement rate, pursuant to subdivision (c), or the provider's usual and customary charge to the general public for the same or similar service.

(2) (A) Reimbursement paid by a county to a narcotic treatment program provider for services provided to any person subject to Section 1210.1 or 3063.1 of the Penal Code, and for which the individual client is not liable to pay, does not constitute a usual and customary charge to the general public for the purposes of this section.

(B) Subparagraph (A) does not constitute a change in, but is declaratory of, existing law.

(i) *(1) A narcotic treatment program that is a public provider that is required by law to provide indigency allowances at less than its full published rates for the same or similar services shall be reimbursed for narcotic treatment and related fee-for-services treatment provided to persons who are indigent but are not eligible for Medi-Cal if service charges are imposed in either of the following ways:*

(A) On a sliding scale based on the ability to pay of persons qualified as indigent, provided the provider satisfies the following requirements:

(i) It publishes a schedule of its full charges.

(ii) Its revenues for patient care are based on an actual application of its full charges.

(iii) It maintains written policies of its process of making patient indigency determinations.

(iv) It maintains sufficient documentation to support the amount of indigency allowances written off in accordance with those policies. For the purposes of this clause, "sufficient documentation" includes, but is not limited to, a verification of a patient's income or employment; eligibility for, or exhaustion of, unemployment benefits; dependent obligations, including spousal

and child support; eligibility for, or exhaustion of, general relief benefits; or any equivalent proof.

(v) It either has no charge for persons qualified as indigent or provides an indigency allowance that is less than 60 percent of the Uniform Statewide Monthly Reimbursement rate determined pursuant to subdivision (c).

(B) In accordance with paragraph (1) of subdivision (h) and applicable federal regulations.

(2) For the purposes of paragraph (1) of subdivision (h), fees collected by a public narcotic treatment program provider for services provided to any person pursuant to subparagraph (A) of paragraph (1) of subdivision (i), do not constitute a usual and customary charge to the general public for the purposes of this section. This paragraph does not constitute a change in, but is declaratory of, existing law.

(3) For the purposes of this subdivision, "public provider" means any narcotic treatment program operated by a federal, state, county, city, or other governmental agency.

(j) (1) A narcotic treatment program that is a private provider and that provides indigency allowances for services at less than its full published rates for the same or similar services to persons who are indigent but are not eligible for Medi-Cal shall be reimbursed if service charges are imposed in either of the following ways:

(A) On a sliding scale based on the ability to pay of persons qualified as indigent provided the provider satisfies the following requirements:

(i) It publishes a schedule of its full charges.

(ii) Its revenues for patient care are based on an actual application of its full charges.

(iii) It maintains written policies of its process of making patient indigency determinations.

(iv) It maintains sufficient documentation to support the amount of indigency allowances written off in accordance with those policies. For the purposes of this clause, "sufficient documentation" includes, but is not limited to, a verification of a patient's income or employment; eligibility for, or exhaustion of, unemployment benefits; dependent obligations, including spousal and child support; eligibility for, or exhaustion of, general relief benefits; or any equivalent proof.

(v) It either has no charge for persons qualified as indigent or provides an indigency allowance that is 60 percent or more of the Uniform Statewide Monthly Reimbursement rate determined pursuant to subdivision (c).

(B) In accordance with paragraph (1) of subdivision (h) and applicable federal regulations.

(2) For the purposes of paragraph (1) of subdivision (h), fees collected by a private narcotic treatment program provider for services provided to any person pursuant to subparagraph (A) of paragraph (1) of subdivision (i) do not constitute a usual and customary charge to the general public for the purposes of this section. This paragraph does not constitute a change in, but is declaratory of, existing law.

(k) Reimbursement for narcotic treatment program services provided by narcotic treatment program providers shall, if the patient receives less than a full month of services, be prorated to the daily cost per patient, based on the annual cost per patient and a 365-day year. No program shall be reimbursed for services not rendered to or received by a patient of a narcotic treatment program.

~~(j)~~

(l) Reimbursement for narcotic treatment program services provided to substance abusers shall be administered by the department and counties electing to participate in the program. Utilization and payment for these services shall be subject to federal medicaid and state utilization and audit requirements.

SEC. 3. Section 11880 of the Health and Safety Code is amended to read:

11880. (a) It is the intent of the Legislature in licensing narcotic treatment programs that use prescription medications to provide a means whereby the patient may be rehabilitated and will no longer need to support a dependency on heroin.

(b) It is the intent of the Legislature that each narcotic treatment program shall have a strong rehabilitative element, including, but not limited to, individual and group therapy, counseling, vocational guidance, and job and education counseling.

(c) The Legislature finds and declares that the ultimate goal of all narcotic treatment programs shall be to aid the patient in altering his or her lifestyle and eventually to eliminate dependency on all illicit drugs.

(d) The department shall promulgate any regulations necessary to ensure that every program is making a sustained effort to end the illicit drug dependency of the patients.

~~SEC. 3.~~

SEC. 4. Section 11880.5 is added to the Health and Safety Code, to read:

11880.5. (a) The Legislature finds and declares that because both the possession and use of heroin are felonies some patients in narcotic treatment programs are under both the jurisdiction of a court and the care of a treatment provider.

(b) A patient who is also a defendant may be directed by a court to discontinue narcotic replacement therapy only when the defendant's treatment provider who is directly providing the narcotic replacement therapy recommends discontinuation and the court agrees that discontinuation is a necessary component of an effective treatment plan for the defendant.

~~SEC. 4.~~

SEC. 5. Section 4032 is added to the Penal Code, to read:

4032. (a) (1) It is the intent of the Legislature that every city, county, or city and county correctional facility may offer programs for the treatment of addiction withdrawal to alcohol or controlled substances that are based on available standards of care.

(2) Any city, county, or city and county may, no later than January 1, 2007, file with the Office of Criminal Justice Collaboration (OCJC) of the Department of Alcohol and Drug ~~Programs a plan for are based~~ *Programs a plan based* on available standards of care~~, including~~ *and a notice of* the plan's expected implementation date.

(3) Any city, county, or city and county that adopts and implements a program for in-jail addiction withdrawal from alcohol or controlled substances that is based on available standards of care shall receive priority eligibility in the award of competitive state grants, including competitive grants for jail programs relating to in-custody substance abuse treatment, law enforcement grants designed to result in increased arrests of alcohol and other drug abusers, or other state grants that the granting agency and the Department of Alcohol and Drug Programs believe are appropriate.

(4) Beginning January 1, 2007, pursuant to paragraph (2), any state agency, department, board, or commission with the authority

to award competitive grants to cities, counties, and cities and counties shall facilitate priority funding as follows:

(A) In determining city, county, and city and county competitive grant recipients, the state agency, department, board, or commission shall include the adoption and implementation of programs for the in-custody alcohol or controlled substance addiction withdrawal that meet available standards of care, as defined in this section, as a factor in the competitive grant consideration and distribution process. State agencies, departments, boards, and commissions shall modify their competitive grant applications and evaluation criteria to ensure that cities, counties, and cities and counties that develop and implement programs that meet available standards of care for in-custody treatment of alcohol or controlled substance addiction withdrawal as determined by the Deputy Director of the Department of Alcohol and Drug Programs Office of Criminal Justice Collaboration, or their designee, receive points equal to between 1 percent to 10 percent of the total point scale upon which the applicable competitive grant is to be evaluated. The state agency, department, board, or commission shall assign these points in a manner consistent with the intent of the state competitive grant program.

(B) Priority funding shall only be given to city, county, and city and county competitive grant applicants that are otherwise qualified to receive awards from the specific competitive grant program at issue.

(C) The Department of Alcohol and Drug Programs Office of Criminal Justice Collaboration shall maintain a file of county plans it has received and a file of notifications of adoption of those plans that it receives and shall determine the compliance of these plans with available standards of care and their implementation as existing resources permit and within its existing budget. If a city, county, or city and county that is otherwise qualified to receive an award from the specific competitive grant program at issue, and has on file a plan to meet community standards of care, and a notice it has implemented that plan, and wishes to receive priority funding, and the Department of Alcohol and Drug Programs has not reviewed the plan and its implementation to determine that it is in compliance with the guidelines, the city, county, or city and

county may arrange to reimburse the department for an expedited review of its plan.

(5) As used in this section, "competitive grant" means any discretionary award of money by a state agency, department, board, or commission that is funded with money from the state General Fund, federal funds, or, except where specifically inconsistent with the applicable bond act, a state bond approved after January 1, 2004.

(b) In developing the programs authorized by subdivision (a), the city, county, or city and county may take into account the following:

(1) Individuals brought into custody by criminal justice authorities should receive appropriate general medical screening to assure that their medical needs will not go unaddressed during their incarceration. The circumstance of being under arrest, detained, jailed, or imprisoned should not preclude access to and provision of medically necessary treatment for alcohol and other drug withdrawal.

(2) Individuals with addiction who are placed in jails or prisons~~,~~ should not be discriminated against because of their diagnosis. Prisoners and other detainees with addiction should receive the medical care necessary to manage withdrawal syndromes, just as they receive the medical care necessary to manage any other acute illnesses or injuries.

(3) *(A)* Given the high prevalence of substance use and addiction among individuals who are arrested or detained in jails or other correctional facilities, individuals should be screened *by appropriately trained personnel* for the presence of, or risk of, addiction and withdrawal at the point of entry into a criminal detention facility. ~~Appropriately trained personnel should conduct screening. When screening identifies a~~

(B) When screening identifies a condition of withdrawal, or a significant likelihood that withdrawal is present or could develop, affected individuals should be seen by a licensed health care professional who can ~~make a definitive diagnosis. When medically necessary, such~~ *make a definitive diagnosis.*

(C) When medically necessary, the health care ~~professionals should~~ *professional should either* render appropriate detoxification services for the withdrawing individual, or arrange

transfer *of the individual* to a health care facility where *those* services will be provided.

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